

## REMARKS

Initially, it is noted that the Examiner has rejected claims 1, 3-4, 7-12 and 16-19 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement due to a typographical error in independent claims 1 and 10. In addition, the Examiner has rejected claims 1, 3-4, 7-12 and 15-26 under 35 U.S.C. § 112, second paragraph, being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has corrected the typographical error in claims 1 and 10 and has amended the remaining claims as suggested by the examiner. It is now believed that all of the pending claims are in proper form for allowance and withdrawal of the Examiner's rejections to the claims under 35 U.S.C. § 112, first and second paragraphs, is earnestly solicited.

The Examiner has rejected all of the claims pending in the application. More specifically, the examiner has rejected claim 10 under 35 U.S.C. § 103(b) as being unpatentable over Orozco, United States Patent No. 6,860,493. Claims 1, 10 and 16 have been rejected under 35 U.S.C. § 103(a) as being obvious over the rotatable cart disclosed on Topper's website on February 6, 2003 in view of Thompson et al., U.S. Patent No. 5,328,192 and the Orozco '493 patent. In addition, claims 3-4, 7, 11-12 and 15 have been rejected under 35 U.S.C. § 103(a) as being obvious over the rotatable cart disclosed on Topper's website on February 6, 2003 in view of the Thompson et al., '192 patent and the Orozco '493 patent and further in view of Foss et al., U.S. Patent No. 4,637,626. Claims 8-9 and 17-19 have been rejected under 35 U.S.C. § 103(a) as being obvious over the rotatable cart disclosed on Topper's website on February 6, 2003 in view of the Thompson et al., 192 patent and the Orozco '493 patent and further in view of Berand, U.S. Patent No. 5,622,299. Claim 20 has been rejected under 35 U.S.C. § 103(a) as being obvious over the rotatable cart disclosed on Topper's website on February 6, 2003 in view of the Berand '299 patent. Claim 21 has been rejected under 35 U.S.C. § 103(a) as being obvious over the rotatable cart disclosed on Topper's website on February 6, 2003 in view of the Berand '299

patent in view of the Thompson et al., 192 patent. Claims 22-23 have been rejected 35 U.S.C. § 103(a) as being obvious over the rotatable cart disclosed on Topper's website on February 6, 2003 in view of the Thompson et al., 192 patent, the Berand '299 patent and the Foss et al., '626 patent. Finally, claims 24-26 have been rejected as being obvious over the rotatable cart disclosed on Topper's website on February 6, 2003 in view of the Thompson et al., 192 patent, the Bodine et al.'298 patent, the Berand '299 patent, and the Foss et al., '626 patent in view of the Orozco '493 patent.

As hereinafter described, applicant has amended the claims to more particularly define the invention for which protection is sought. It is believed that the pending claims define over the cited references. As such, reconsideration on the Examiner's rejections is respectfully requested in view of the following comments.

Claim 1 defines a tugger cart for transporting a load. The tugger cart includes a support frame and a bed having a cylinder. The bed is rotatably mounted to the support frame such that the bed is rotatable about a bed axis perpendicular to the bed and extending through the center of the bed. A wheel assembly is operatively to the support frame for supporting the support frame above the supporting surface. A handle assembly is slidably connected to the support frame. The handle assembly is movable between a first retracted position and a second extended position. A load support member extends from the handle assembly in a direction toward the bed. The load support member includes the load support arm having an upper surface for receiving a portion of the load thereon. A bracing element has a first end operatively connected to the handle assembly and a second end operatively connected to the load support arm. The second end of the bracing element and the support frame define an opening therebetween so as allow the unobstructed rotation of the bed about the axis. As hereinafter described, nothing in the cited references shows or suggests a tugger cart having a rotatable bed and incorporating a load support member that incorporates a bracing element supporting a load support arm for receiving a portion of the load thereon, wherein the second end of the bracing element and the

support frame define an opening therebetween so as allow the unobstructed rotation of the bed about the axis.

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. MPEP § 2142. As stated in MPEP § 2143, “To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” MPEP §2143, (emphasis added).

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). To establish a *prima facie* obviousness rejection, the Examiner must not only show that the combination includes each and every element of the claimed invention, but also provide “a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). That is, “[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.” MPEP § 2143.01. “The fact that references can be combined require a selected combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest

the desirability, and thus the obviousness, of making the combination. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P. Q. 2d 1434 (Fed. Cir. 1988). Applicant believes that a *prima facie* case of obviousness has not been established and one cannot be made based on the art of record.

As pointed out by the Examiner, the prior art Topper tugger cart included a support frame, a bed rotatably supported thereon and a wheel assembly for supporting the frame. However, nothing in the prior art Topper tugger cart shows or suggests a handle slidably connected to the support frame or a load support member extending from the handle assembly in a direction toward the bed wherein the load support member is supported by a bracing element and wherein the second end of the bracing element and the support frame define an opening therebetween so as allow the unobstructed rotation of the bed about the axis. None of the other cited references can cure the deficiency of the prior art Topper tugger cart.

The Thompson '192 patent discloses a manually pull-type carrier that incorporates a mobile carriage and a towing handle assembly slidably mounted to the carriage for changing the overall length of the carrier. The handle assembly includes a pair of longitudinal rails slidably mounted within the load carrying bed of the mobile cartridge for changing the overall length of the carrier in order to support animal carcasses of different lengths thereon. The '192 patent does not disclose a load support member or a bracing element as required by claim 1.

The Orozco '493 patent merely discloses a cart having an inclined support frame support above the bed of the cart by a pair of vertical support rods. The Examiner has suggested that the Orozco patent discloses a bracing element. However, the so-called bracing element disclosed in the '493 patent is interconnect to and supported by the bed. Such a structure would prevent rotation of the bed as required by claim 1. Further, there is no teaching in the '493 patent to interconnect the bracing elements to the handle assembly, as required by claim 1. Such a suggestion is entirely absent from the Thompson '192 patent and the Orozco '493 patent.

Clearly, there would be no incentive to modify the structures disclosed in the Thompson '192 patent and the Orozco '493 patent for the second end of the bracing element and the support frame to an opening therebetween so as allow the unobstructed rotation of the bed about the axis, as required by claim 1, since neither of the cited references incorporate a rotatable bed. The examiner is merely combining the teachings of the prior art to produce the claimed invention without any teaching or suggestion in the cited references to support such combination.

In view of the foregoing, Applicant believes that claim 1 clearly defines over the cited references and is in proper form for allowance. Claims 3-4 and 7-9 depend either directly or indirectly from independent claim 1 and further define a tugger cart not shown or suggested in the art. It is believed that claims 2-4 and 7-9 are allowable as depending from an allowable base claim and in view of the subject matter of each claim.

Claim 10 defines a tugger cart for transporting a load. The tugger cart includes a support frame and bed receiving on the support frame. A wheel assembly is operatively connected to the support frame for supporting the support frame above a supporting surface. The handle is slidably connected to the support frame adjacent the end thereof. The handle is movable toward and away from the support to a plurality of user selectable positions. A load support member extends from the handle assembly in a direction towards the bed. The load support member includes a load supporting arm having an upper surface for receiving a portion of the load thereon. A bracing element has a first end operatively connected to the handle assembly and a second end operatively connected to the load support arm. The second end of the bracing element and the support frame define an opening therebetween so as allow the unobstructed rotation of the bed about the axis.

As heretofore described with respect to independent claim 1, nothing in the cited references shows or suggests a tugger cart having a rotatable bed and a load support member that incorporates a bracing element supporting a load support arm for receiving a portion of the load thereon, wherein the second end of the bracing element and the support frame define an opening therebetween so as to allow the unobstructed rotation of the bed about the axis. There is no teaching or suggestion in the combination of the Topper prior art cart, the Thompson et al. '291 patent and the Orozco '493 patent to provide for the tugger cart defined in claim 10. More specifically, there is no teaching or suggestion in any of the cited references to provide a tugger cart wherein the handle assembly is slidably mounted to the support frame and wherein the second end of the bracing element and the support frame define an opening therebetween so as to allow the unobstructed rotation of the bed about the axis, as required by claim 10. Hence, it is believed that claim 10 defines over the cited references and is in proper form for allowance.

Claims 11-12 and 15-19 depend either directly or indirectly from independent claim 10 and further define a tugger cart not shown or suggested in the prior art. It is believed that claims 11-12 and 15-19 are allowable as depending from an allowable base claim and in view of the subject matter of each claim.

Claim 20 defines a tugger cart for transporting a load. The tugger cart includes a support frame having an end and bed having a center. The bed is rotatably mounted to the support so as to be rotatable about the bed axis perpendicular to the bed and extending through the center of the bed. A retractable pin is operatively connected to the support frame and is movable along a vertical pin axis between an extended position and a retracted position. The pin axis is a predetermined radial distance from the bed axis. The locking plate is connected to the bed and has an aperture therethrough for receiving the pin in an extended position so as to maintain the bed in the predetermined position in the support frame. The aperture has a center being of a predetermined distance from the bed axis. The locking pin includes a horizontal plate having

first and second opposite sides and includes the aperture therethrough. A pair of ramp plates diverge from opposite sides of the base and interconnects the base to the lower surface of the bed. The locking pin is engageable with the ramp plates and the horizontal base.

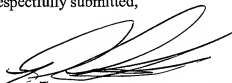
As noted by the Examiner, none of the cited references shows or suggests a tugger cart having a locking plate that incorporates a horizontal brace with ramp plates. However, the Examiner suggests that the Berand '299 patent discloses such a structure. While the examiner concedes that the legs disclosed in the '299 patent are not diverging ramp plates as required by claim 20, the examiner suggests that such a limitation is merely an "inconsequential design variation." This is clearly inaccurate. It can be appreciated that the ramp plates provided for in claim 20 function to urge the retractable pin towards its retracted position, thereby allowing the pin to be received in the aperture in the horizontal base (hence, locking the bed in position). If the ramp plates did not diverge as required by independent claim 20, the structure would not function as intended. As such, the limitation in claim 20 directed to divergent ramp plates is not merely an "inconsequential design variation" as suggested by the examiner. However, in order to more particularly define the invention, applicant has amended claim 20 to specifically state that the pin is engageable with the ramp plates and the horizontal base. This arrangement clearly defines over the cited reference. Hence, it is now believed that claim 20 defines over the cited references and is in proper form for allowance.

Claims 21-26 depend either directly or indirectly from independent claim 20 and defines a tugger cart not shown or suggested in the art. It is believed that claims 21-26 are allowable as depending from an allowable base claim and in view of the subject matter of each claim.

U.S. Serial No.: 10/820,924  
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Page 15

Applicant believes that the present application with claims 1, 3-4, 7-12, and 15-26 is in proper form for allowance and such action is earnestly solicited. The Director is hereby authorized to charge payment of any additional fees associated with this or any other communication or credit any overpayment to Deposit Account No. 50-1170.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter C. Stomma', is written over a horizontal line.

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